

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

v.

ROBERT F. MCDONNELL,

Defendant.

Action No. 3:14-CR-12-1

ORDER

THIS MATTER is before the Court on a Motion for Issuance of Rule 17(c) Subpoena Duces Tecum ("Motion") (ECF No. 155) filed by Robert F. McDonnell. Upon due consideration, the Motion is GRANTED IN PART.

Defendant moves the Court to issue subpoenas duces tecum pursuant to Federal Rule of Criminal Procedure 17(c). Mr. McDonnell requests that the Court order the Clerk to issue three subpoenas duces tecum addressed to Star Scientific, Incorporated ("Star Scientific"), Jonnie Williams, Sr. ("Williams"), and Paul Perito ("Perito"). It is well established and understood that Rule 17(c) speaks to pretrial production of *specific* evidence that would be both relevant and admissible at trial. *United States v. Beckford*, 964 F. Supp. 1010, 1022 (E.D. Va. 1997). The burden is on the requesting party to demonstrate that his request meets each of these three requirements: specificity, relevancy, and admissibility. *United States v. Nixon*, 418 U.S. 683, 700 (1974). It is also abundantly clear that Rule 17(c) is not a general discovery provision.

Ten categories of information are sought from Star Scientific, Williams, and Perito. The instant Motion seeks to subpoena:

Any documents, records and correspondence related to:

- a. Internal communications of Star Scientific and its affiliates regarding Virginia officials, employees, and their family members, from January 1, 2009 to the present;

- b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to the present;
- c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to the present;
- d. Internal communications of Star Scientific and its affiliates and/or communications with representatives of McGuireWoods LLP or McGuireWoods Consulting LLC regarding research of Star Scientific products at Virginia universities or colleges or regarding benefits from the Virginia government, including budget line items or funding from the Virginia Tobacco Commission, from January 1, 2009 to the present;
- e. Investigations of Star Scientific or Jonnie Williams, Sr. conducted by the Virginia Department of Taxation, IRS, SEC, or FDA, including any communications regarding immunity or any settlement agreement or consent decree;
- f. Communications with Star Scientific shareholders regarding any objections to Star Scientific's actions, including written demands made by the shareholders on Star Scientific's board of directors and whistleblower complaints;
- g. Communications between Star Scientific representatives and law enforcement agencies or their respective lawyers, including notes, transcriptions, recordings, or memoranda regarding any investigation of Star Scientific or Jonnie Williams, Sr. for the time period of January 1, 2009 to the present;
- h. Communications regarding an internal investigation of Star Scientific conducted by Chadbourne & Parke or Abbe Lowell, from January 1, 2009 to the present;
- i. *In re Star Scientific, Inc. Securities Litigation*, No. 3:13-cv-183-JAG (E.D. Va.) or *In re Star Scientific, Inc. Derivative Litigation*, No. 1:13-cv-00550 (E.D. Va.), as it relates to the Government's intervention in these cases, including communications between Star Scientific representatives and Government agencies or their lawyers regarding the Government's intervention; as well any documents related to Star Scientific's budget for defending these lawsuits; and
- j. Information related to Star Scientific's policies, procedures, and training regarding company expenses and their approval.

(Def.'s Mot. for Issuance of Rule 17(c) Subpoena Duces Tecum 1-7). The information categories a, d, f, g, h, i, and j do not meet the requirements of *Nixon*. Therefore, the request of subpoenas duces tecum relating to said information categories is DENIED.

The time parameters of information categories b and c will be narrowed to the time period of January 1, 2010 to the date of the Indictment—January 21, 2014. Thus, the language in the subpoenas will read:

Any documents, records and correspondence related to:

- b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;
- c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;

The information in category e will be narrowed so as to confine its reach to relevant and admissible evidence. The request will be redrawn as follows:

- e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement;

Pursuant to Federal Rule of Criminal Procedure 17(c), the Clerk is DIRECTED to issue subpoenas duces tecum to the entities and persons listed below:

1. To Star Scientific, Inc., c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036: Any documents, records and correspondence related to:
 - b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;
 - c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;

- e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement.
2. To Jonnie Williams, Sr., c/o Richard Cullen, McGuire Woods LLP, One James Center, 901 East Cary Street, Richmond, VA 23219-4030: Any documents, records and correspondence related to:
- b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;
 - c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;
 - e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement.
3. To Paul Perito, c/o Abbe Lowell, Chadbourne & Parke, 1200 New Hampshire Avenue, NW, Washington, DC 20036: Any documents, records and correspondence related to:
- b. Communications with representatives of Virginia universities and colleges regarding research involving anatabine or products made or marketed by Star Scientific or Rock Creek Pharmaceuticals, Inc., including Anatabloc and CigRx, from January 1, 2009 to January 21, 2014;
 - c. Communications with representatives of the Virginia Tobacco Commission, or about the Commission, relating to obtaining funding for Star Scientific or its affiliates or for research of anatabine or Anatabloc, from January 1, 2009 to January 21, 2014;
 - e. Any communication which discusses or pertains to an offer or acceptance of either an immunity agreement, a settlement agreement, or a consent agreement flowing from an investigation of Star Scientific, Inc. or Jonnie Williams, Sr. As well as any document(s) that memorialize said agreement.

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The requested information should be submitted to:

Spottswood W. Robinson III and Robert Merhige, Jr., Federal Courthouse
ATTN: Clerk's Office
701 East Broad Street, Third Floor
Richmond, Virginia 23219

The requested information is to be submitted on or before May 27, 2014 at 12 p.m.

Let the Clerk send a copy of this Order to all counsel of record and notify defense counsel, John L. Brownlee and Henry W. Asbill, when the subpoena is ready.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 15th day of May 2014.